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ABSTRACT

Divorce can have traumatic financial and emotional effects on midlife and older women who have fulfilled cultural expectations by becoming homemakers or accepting low-level, dead-end employment because the husband had the "real" career. This "gray paper" therefore addresses the adverse legal consequences of the rise of no-fault marital dissolution statutes on older women. The first section reviews the origin and rationale of no-fault dissolution, and notes the resulting loss of bargaining power for women as a consequence of these statutes. The second section discusses problems in awarding support and dividing property. Discussion focuses on current limitations and inequities in child support, spousal support, and marital property. The third section, "Encountering the Law," introduces the adversary system of law and its inherent problems as a forum for settling divorce proceedings. Seven legal approaches to divorce are described and evaluated, ranging from cheapest to most expensive: (1) "do it yourself" dissolution; (2) "uncontested" dissolution clinics; (3) summary dissolution; (4) the mutual lawyer; (5) dissolution mediation; (6) default dissolution; and (7) full trial. Attorney's fees are described, and advice on hiring attorneys is provided. The final section discusses strategies for change. Footnotes are included. (TE)

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GRAY PAPER

Divorce and Older Women

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Divorce and Older Women

INTRODUCTION

> The (no-fault dissolution) Act may not be used as a handy vehicle for the summary disposal of old and used wives. A woman is not a breeding cow to be nurtured during her years of fecundity, then conveniently and economically converted to cheap steaks when past her prime.[1]

Despite this judicial admonition, the no-fault dissolution statutes have too often proved disastrous to older women. Women who in good faith fulfilled cultural expectations (indeed, demands) and become homemakers, or accepted low level dead-end employment because the husband had the "real" career, have received a cruel shock in their mid to older years. With the advent of no-fault dissolution in the 1970's, the discarding of midlife and older wives has escalated. Neither social support systems, nor income maintenance guarantees, nor enlightened property concepts have materialized to cushion the shock.[2]

There is considerable debate on almost all aspects of dissolution: marital property, spousal support, child support, custody, marriage contracts, the role of lawyers and of courts, and much more. While the entire range of the debate affects both sexes, all ages, and marriages of all lengths, this paper focuses on those aspects which affect midlife and older women in a particular way. Typically this means a woman in her forties, fifties or sixties who has devoted much or all of her married life to homemaking or a "non-career" job, or a combination of both, with no possibility of advancement and little or no retirement benefits.

For such women, economics are paramount. The division of the marital property and the awarding of spousal support are primary considerations. Child custody and support are not an issue when the children are grown, although support for the college student can be a major concern. This paper discusses the economics of dissolution for the midlife and older wife, guides to obtaining the best legal advice, and strategies for reform.

Dissolution is more than a legal process, more than an economic upheaval, more than an emotional trauma. It is more than the three combined. The impact on midlife and older women is maximum. The analogy to a "breeding cow" is most apt. And advocates for progressive reform mean to see this changed.

Written by Frances Leonard, Attorney at Law, 1987.

I. THE IMPACT OF NO-FAULT DISSOLUTION

In 1970, the first "no-fault" dissolution statute was enacted. By 1987 all states but one had some form of no-fault statute.[3]

No-fault was originally conceived out of a variety of mixed interests and intents. Some reformers, appalled by the sham testimony in fault hearings, saw no-fault as a pragmatic, more truthful procedure. Others hoped that by making fault testimony legally irrelevant, and thus inadmissible in court, the vilification divorcing spouses heaped on one another would be abated. The negative impact of the courtroom "drama" on children was also a legitimate concern. Many men welcomed no-fault as a means of reducing their support obligations, and feminists (in the beginning) perceived it as a positive discarding of the economic role of dependency for women.[4]

In any case, in less than ten years no-fault dissolution had swept the land. An unforeseen consequence was the sudden increase in break-ups of lengthy (15 or more years) marriages. Thirty-five years ago, only 4% of all divorces filed involved marriages of fifteen years or longer; before the tenth anniversary of no-fault, 25% of divorces involved marriages of that length.[5] Many hailed this as proof that no-fault was working. They assumed that both spouses were relieved to be out of dead marriages, which presumably had been held together by the couple's distaste for the fault procedure.

Unfortunately for midlife and older women, the real reason underlying the increase is now thought not to be so benign. Analysts report that the loss of bargaining power by women accounts for the increase.[6] Under the fault system, if one spouse opposed the divorce, the other had to bargain in order to get it. For example, if a man wished a divorce in order to remarry, either he would have had to prove, over her opposing testimony, that his wife had committed adultery, or was insane, or some other ground, or he would "bargain" with her. The bargain often was a property settlement in exchange for her "giving" him the divorce. She would file, accusing him of one of the traditional grounds, and he would offer no opposition.

With the advent of no-fault dissolution, midlife and older wives lost this tool. No longer was there an "innocent" party to be awarded extra property and support. No longer could she unilaterally hang on to the marriage until the terms offered her will secure her future apart from it.

Superficially, this appears fair. Few people favor perpetuating dead marriages on something very close to economic blackmail. The apparently equal or equitable division of marital property seems reasonable, and spousal support granted temporarily (if at all) to help a homemaker become self-supporting seems modern and liberated. The enuciated goal of returning the parties to single status free of the ties of the past seems acceptable.

The economic problems for women lie not so much in the "no-fault" formulary, but in the definitions of marital property which exclude major marital assets such as pensions (in some states), professional and skilled

training and licenses (in most states), and the combined earning power of the spouses (in all states). In addition, the underlying purpose of spousal support needs to be examined in light of long term marriage so that support can be structured to more fairly reflect the damage done to the wife's earning power as a result of her marital role.

Repeal of the no-fault provisions is not the answer for midlife and older women. No one wishes to return to the sham or vilification of the earlier procedure. But social progress in one area must be matched by solutions for the new problems created in the process of change. No-fault, to be truly a good idea, must be paired with developing concepts in marital property, support and governmental responsibility for unemployed homemakers.

II. Problems in Awarding Support and Dividing Property

Support, both spousal and child, is of paramount importance in dissolution planning for midlife and older women, especially if they made homemaking and childbearing their career.[7] Because of sexism and agism, or perhaps physical disability, decently paid employment will almost always be next to impossible for them to obtain.[8]

A. Child Support

Inadequate child support award levels and noncompliance with support orders have been described as a national disgrace and scandal.[9] Child support may be thought to be less of an issue for midlife and older women, because very often the children have left the home.

However, for the midlife divorcing women and her teenage children, a hidden trap has developed. In recent years, most states have lowered the age of majority from twenty-one years to eighteen. Child support will almost never be ordered by a court to extend into legal adulthood. But many young adults look to their parents to finance or at least assist in their post-high school or college education. With child support ending at age eighteen, the custodial parent, usually the mother, will very likely be left to finance the education unassisted.

Researchers have noted that result is "an unexpected finding of a downward economic and social trend and disadvantaging of a significant number of (college age children of divorced parents) from middle-class families as they stand on the threshold of adulthood."[10]

Because of this, the California Senate Task Force on Family Equity, created in response to Dr. Lenore J. Weitzman's groundbreaking work, The Divorce Revolution[11] recommended legislation to increase the obligation of child support to age twenty-one.[12] But the California legislature has failed to enact this reform.

B. Spousal Support

There are critical differences between spousal support and marital property. The divorcing spouses have property rights to marital property. But spousal support is awarded at the discretion of the court. It can be

increased, decreased, eliminated, or not even awarded in the first place. The Census Bureau reports that the mean alimony award received by American women over 40 in 1985 was $4365, which was a decrease in constant dollars of 24% over the two preceding years.[13]

Retirement or remarriage of the husband can result in reduced spousal support for the former wife. Enforcement of delinquent support awards is costly, lengthy, and often unsuccessful. An additional problem is that spousal support usually ends on the death of the husband. There generally are no survivor's benefits payable from his estate, unless an insurance policy favoring the former wife was in effect.

The advent of no-fault dissolution brought with it another trend that proved devastating to older women. Courts reacted to the women's movement by "liberating" homemakers into the paid labor market, with little or no spousal support at all. Courts and lawyers have been utterly oblivious to the desperate unemployment plight of the career homemaker. Here are the words of one who knows:

> What do you do when you are 58 years old, without a job, and with few skills that are saleable? You apply for jobs and then go home and pray a lot. You are hired in a job, then they let you go after a month because younger people were available for your job--and you left without a murmur because, like a whipped puppy, you have learned simply to lower your head and slink away to lick your wounds. You have learned that to be nearly 60 and in need of work makes you a subject of ridicule--or pity--or nebulous promises to phone you if a job should materialize. What makes it worse is that 95% of your prospective bosses think, "This old gal will work for minimum wages, and I don't have to be polite with her--but I'd rather hire a pretty young thing, so to heck with her." There are days when you gather your tattered self-esteem, put on your best clothes and make-up extra carefully, and you go out, determined that this is the day you will get permanent, decently paid work. That evening you creep home alone and defeated and if the tears come, who is there to see?[14]

For the wife with a low-paying job, the situation is equally bad. In her case, the courts will assume she can survive on her earnings; it is very unlikely that support will be awarded. Never mind that during the marriage her husband earned twice or three times what she did--and will continue his high earnings and standard of living post-divorce. She will be relegated to whatever situation her meager earnings can sustain. No attempt to supplement her earnings with spousal support will be made--despite the fact that her low-wage job is probably a direct result of decisions made mutually by the couple to keep his position paramount.

The sobering fact remains: spousal support is all too likely to be the only income to the homemaker until she is eligible for Social Security, while the working wife will be left to her low wages. A big part of the problem is that the traditional justification for spousal support is obsolete. If it is seen, as now, to be a temporary "favor" given only to put the wife on her own two feet, midlife and older women will continue to be terribly vulnerable upon divorce.

A more sophisticated concept of spousal support is that of delayed compensation for the sacrifice of earning potential by the homemaker or low-wage employed wife.[15] By not developing a well-paid career, the wife comes out of a long marriage at a serious economic disadvantage relative to her higher earning spouse. And the longer the marriage, the greater the inequality. He leaves the marriage with his enhanced earning capacity intact, while she leaves with adequate employment opportunities virtually nil. By virtue of the marriage (or her marital role) her earning potential was undeveloped; thus compensation for this damage via post-marital support is most appropriate. Seen as delayed compensation or reparation, spousal support approaches a right rather than, as now, a precarious privilege.

A second concept of spousal support might be analogous to unemployment insurance benefits, paid by the employer to the involuntarily laid-off employee. Homemakers still comprise the largest single occupational class in the United States. There are government programs to support persons in almost every other category. None exist for the homemaker: no Social Security, AFDC (unless she has minor children), SSI (unless she is over 65 or blind or disabled), workers' compensation, unemployment insurance, disability insurance, or vocational rehabilitation programs. As marital dissolution escalates among career homemakers, serious efforts should be made to establish government-funded income support for displaced homemakers, analogous to unemployment benefits. An unpaid homemaking career combined with age and sex discrimination can amount to permanent employment disqualification for midlife and older divorced women.

Finally, "opportunity cost" could be a basis for alimony awards. By this method, earnings of people with similar age and background (or in the occupation the older wife was trained for and left) would be calculated, and form a basis for the award.

The California Senate Task Force on Family Equity recommended that a presumption of permanent spousal support is appropriate in marriages of long duration. It stated that in such marriages spousal support should serve to equalize the standards of living of both spouses after the dissolution, and that older homemakers should not be forced to obtain employment that is not commensurate with the standard of living established during the marriage or that is not appropriate for their age, education or skills.[16]

Rejection of the discretionary, inadequate, and precarious award that is today's spousal support would go far toward alleviating a major problem for divorced older women. Government funding, as well as redefinitions of support standards, concepts and goals would move post-marital income for women divorcing after a long marriage into the arena of "rights" as opposed to "privilege."

C. Marital Property

Unlike current concepts of spousal support, marital property is divided and awarded as a matter of right. Property laws significantly differ among the states. Eight states with a Spanish or French heritage follow community property principles.[17] Community property states differ, but generally the concept is that the assets earned during a marriage belong to both parties equally, regardless of whose name is on the title or check.

The remaining 42 states and the District of Columbia are known as "common law" jurisdictions, because of their historic ties to the English common law. Traditional common law dictated that property belonged to the husband, or to the person whose name was on the check or title. All common law states have abandoned the title theory of property division in the wake of no-fault enactments, and most now subscribe to a theory of "equitable division," which means that the judges divide the property along lines they deem fair.

Even most community property states divide property "equitably" rather than "equally" upon dissolution, so one result of the 1970's divorce reform movement was to diminish the historic differences between the community property and common law states.

The more important differences between states remains the disagreement over what constitutes marital property. Some states, for example, recognize the pension benefit as a divisible property right, while others do not. Some recognize that a professional education earned during the marriage creates a divisible marital asset in that education or license. For midlife and older women the identification and recognition of intangible property rights in their home state is most important.

A major contribution to the understanding of marital assets was made by Professor Weitzman in The Divorce Revolution. In the chapter entitled "The New Property," Dr. Weitzman explores various intangible assets identified by courts in recent years, and introduces the concept of "enhanced earning power" as the most important marital asset as yet unrecognized in the country's marital property laws.[18]

Enhanced earning power is the difference between what the parties could earn at the outset of the marriage, and their earning power at the point of dissolution. This enhanced capacity represents human capital, in Dr. Weitzman's analysis, which resulted from choices and sacrifices made by both spouses during the marriage. Of critical importance was her finding that in most dissolutions she surveyed, the most valuable asset acquired during the marriage was the husband's enhanced earning power.[19] This asset exceeds the home and pension in value, yet remains unrecognized as property and therefore not divided upon divorce.

Of paramount importance to the older divorcing wife is the family home. Unlike her spouse, she may have no credit history, no income except alimony, and almost no prospect of recovering her lost earning capacity. Yet all too commonly the court orders the home sold, in order to divide its value and to pay attorneys' fees. For the older woman, especially a homemaker, this is a major cruelty; upon divorce, she loses her husband, her occupation, and then --all too often--her home. This nearly comprises her universe. In those states which do permit the sale of the home to be delayed, it is usually only in situations where minor children are involved.

Dissolution is a bitter experience for men, too. But a divorcing man retains his identify as a "salesperson," "plumber," or "executive." He will continue to go to the familiar workplace. And he remains a potential new home buyer. Not so for the former wife.

Thus the older wife, whose home may represent her lifetime efforts, and her neighborhood her entire environment, is forced out in order to effect the property division. Of course, parties can agree to a delayed sale between themselves in all states, and often the home and pension will be allocated so that she gets the home, he the pension. An older women should critically evaluate such a trade-off before agreeing to it. In effect, she is bargaining away her retirement income.

III. ENCOUNTERING THE LAW

A. The Adversary System

The American system of resolving disputes, inherited from the British, is known as the "adversary system." The theory is that "truth and justice" will be revealed when each party puts his or her own case forward in the best possible light, before a neutral fact-finder and judge. For this system to work, the adversaries should **not** be neutral, objective or conciliatory. To the extent that they are, they usurp the judge's role and dilute their own effectiveness.

This system is at its best when the parties are irrevocably opposed such as in criminal prosecution. The State goes all out to convict the defendant; the defendant goes all out to defend, and the fact-finder (judge or jury) decides. But this system, when applied to divorcing parties, approaches its worst.

The healthiest outcome of the procedure, from the point of view of the parties and society in general, would be the ultimate mature resolution of the former spouses to put past hurts behind, and move on. Unfortunately, the nature of the adversary system tends to increase the tensions, divisions and pain at the worst possible time, even though 90% of dissolutions are settled without need of a trial.

The lawyers and court are familiar and comfortable with the system. They understand the necessity of each party's characterizing his or her position in the most favorable light. But the divorcing spouses often do not understand. They react in outrage when they hear the other side's case. Vilification and vindictiveness enter where "mere" hurt and disappointment began. It is not surprising that many divorced couples maintain that all was reasonably amicable until the lawyers were hired.

B. You Get What You Pay For: Ways To Divorce

For many persons in the process of dissolution, the temptation is to preserve the marital property by economizing on the divorce. **Older women are the most likely of all persons to be disadvantaged by an "economy" proceeding.** This is because their long years working in the home or in low-paying jobs have not prepared them for sophisticated negotiations over complex property concepts. Further, a long marriage may have accumulated intangible property the wife may have a right to but not recognize. The following methods go (roughly) from the cheapest to the most expensive.

1) "Do-It Yourself" dissolution: The spouses buy a book or a "form-kit" from a bookstore or divorce clinic. They fill out their own forms, work out their own property and income divisions, and make their own court appearances. In most states, this is all legal, and therein lies the problem: If unfairness in the provisions becomes evident later, the court will probably hold the parties to it as strictly as if they were represented by counsel. Persons divorcing after a long marriage should be very wary of this approach. Older homemakers, especially, should seek legal counsel before agreeing to a "do-it-yourself" proceeding to save fees. The husband is more likely to be financially sophisticated, and conversant with property and income concepts, than the wife.

2) "Uncontested" dissolution clinics: Some lawyers, either in private practice or in a clinic setting, offer a bargain price for an "uncontested" dissolution. This is a worthwhile service for childless couples following a marriage of short duration, where both parties have equivalent earning capacities. An "uncontested" dissolution means that property, support and custody are settled by agreement between the spouses, with the lawyer only filing the procedural papers and making the routine court appearance. But this is almost certainly a false economy for midlife and older women. The pitfalls are the same as in the "do-it-yourself" procedure.

3) Summary dissolution: In some states, a short marriage, childless, with almost no marital property and no need for spousal support, can be dissolved in a summary procedure. This is quite simple, inexpensive, and a good thing where appropriate. Because of the stringent property limits, summary procedures will be unavailable to most marriages of long duration. Further, to avail oneself of the summary procedure, all rights to spousal support might have to be permanently waived--for midlife and older women, no matter how confident, a very unwise step.

4) The mutual lawyer: Another common economy is the decision of the couple to employ one lawyer to represent them both. Under the adversary system, this places the lawyer in a difficult position, because the legal interests of the clients are in conflict (even if both are emotionally in agreement, the legal conflict remains). Although it is not unethical for the attorney to represent both parties so long as he or she informs each of them of the conflict, this type of arrangement, like the foregoing economy procedures, places the wife at a disadvantage. The attorney and the husband are likely to "speak the same language," even if the attorney is a woman. If the wife has worked in the home or in unsophisticated jobs out of the home, she will almost certainly be disadvantaged.

5) Dissolution mediation: Dismayed by the hostilities generated by the traditional adversarial method, many attorneys have tried a different approach in recent years. Either the attorney or a counselor supervised by the attorney will "mediate" the dissolution, which means that the parties and mediator will meet and attempt to arrive at an agreement together, without resorting to the demands and counter-demands of the traditional system. One of the principal purposes of mediation is to keep the dissolution and its emotional aftermath as emotionally painless as possible. Unfortunately, after a few years of experience, the reports on mediation for the longtime homemaker or underemployed wife are not favorable. The short-term emotional

gain, if any, is obviated by later economic distress, as the former wife realizes she traded away spousal support or property in the process.

6) Default dissolution: Both spouses employ independent counsel, who between them work out an agreement covering custody, visiting, property, spousal support and the rest. The agreement is incorporated into the court order, and one party "defaults" by not appearing in court to oppose the agreement (or appears only for the purpose of stipulating his or her consent). Although expensive, because of the negotiating expertise of both lawyers, this is the best method available for most midlife and older women. Knowledge of the law and the ability to negotiate the settlement are what lawyers are paid for, not for filing papers. This may represent the most important "purchase" of the midlife or older woman's lifetime. Default dissolutions avoid a lengthy, expensive and acrimonious court trial. Further, attorney-negotiated settlements are almost always superior to court-ordered results after trial.

7) Full trial: This represents dissolution at its worst. Unable to agree on one or more issues, the parties hire (very) expensive experts--appraisers, actuaries, accountants, psychologists, vocational counselors and more. The court does not have the flexibility in making a property division that the parties do. To pay the cost of the dissolution (often thousands of dollars), property may have to be sold, very likely including the home. No one wins, not even the lawyers, who generally go to trial reluctantly and only because their clients refused to agree to a negotiated settlement.

In sum, good divorce representation is a must for midlife and older women. More than anyone else involved, their futures will be decided by the outcome. The husband will take with him his earning power, a young wife will retain her re-marriageability or greater job or training opportunities. Economy dissolutions are a very poor investment for midlife and older women. But if a woman later decides she was disadvantaged by incompetent or negligent legal counsel, she may have a remedy in the form of a malpractice suit against her attorney.

C. Attorney's Fees

Because the rights of each party in a divorce are protected only to the extent that they have equal access to legal representation, money to pay an attorney is a bottom line economic issue in divorce. It is an issue which urgently needs the attention of judges, legislatures and activists.

Unfortunately, women who work as unpaid homemakers or for low wages in the workforce are not likely to have ready access to the funds needed to meet the ongoing costs of legal representation. Understandably, attorneys usually refuse to accept a client who cannot meet ongoing expenses.[20]

Attorneys who do agree to represent female clients often must wait for payment of their fees until after the dissolution is final and the property is divided. Sometimes they can seek a court order that the husband, the primary wage earner for the family, contribute to the costs of the wife's legal expenses. But such orders are granted infrequently, usually cover only a small amount of the expense involved, and are difficult to enforce. These realities discourage the attorney from seeking such orders.[21]

Attorneys who represent female clients with limited resources are necessarily influenced by those limits with regard to the amount of time and energy they are able to spend on the case. By contrast, most husbands in dissolution cases are the sole or primary wage-earner for the family and are more easily able to meet legal costs.

Equalizing the availability of adequate legal representation of the parties should be a major concern of our justice system. Yet our survey of state laws shows that even the states which provide by statute that the court "may" order one spouse to pay "reasonable" attorney's fees for the other, do not mandate such an order, even when the inequities are clear, and they do not specify what is a reasonable amount to be paid. In practice, the courts don't order awards in amounts which put the non-earning or lesser earning spouse on an equal footing with the higher earning spouse.

D. The Lawyer: For Better or For Worse

Selecting and dealing with an attorney presents such an obstacle to many midlife and older women that they either yield to using their husband's attorney or are overly submissive to their own. Selection of good legal services for a divorcing wife is one of the most important consumer decisions she will ever make. It should be given far more objective thought and care than the selection of a new appliance or car. The following may be helpful in making a wise decision:

1) Have separate counsel; the parties should not use the same lawyer.

2) A lawyer who is a family friend may be "cheaper" or more familiar, but will inevitably feel personal conflict in opposing the other spouse. A vigorous advocate is needed.

3) The family lawyer is not an appropriate choice, if he or she has dealt mostly with the husband.

4) Do not presume that all women lawyers will automatically be more sympathetic than a male attorney, even those who are known as feminists. Attorneys should be not be judged based on their gender.

5) Friends or women's organizations are still the best source for referrals.

6) If the state permits specialization, a family law or matrimonial law specialist might be a good way to go. However, many rely on volume and standardization. "Hand-holding" may be a low priority (friends, support groups, and counselors are best for that, not lawyers).

7) The attorney's track record on representing women in marriages of long duration should be examined. The attorney with the whizz-bang reputation in child custody may not be the best in sophisticated property settlements involving intangible property rights such as pensions, business goodwill, and earning potential, which are the issues most likely to be important to older wives.

8) In the attorney-client relationship, the client is the employer, and should remember this. Fee arrangements should be discussed during the first phone call, or first visit at the latest, and agreed to in writing. The attorney's relevant experience, especially in dissolutions involving long marriages, should be ascertained. It is very important that the attorney understand the extraordinarily difficult job market awaiting the older homemaker, and strategize the settlement agreement accordingly.

9) In the final analysis, the individual must consult her senses. She and the attorney will go through the toughest period of her life together, and the relationship must "fit."

After an attorney has been retained, and has filed the first official paper with the court, he or she becomes the "attorney of record." This means the client can discharge the attorney at any time, but unless the client agrees or the court orders, the attorney can't "fire" the client. The client is the employer, the attorney the employee. This perspective is often lost. This does not mean the client can tell the attorney how to manage the case--but it does mean that the client shouldn't acquiesce in "signing-off" a hasty settlement, or permit the attorney to make less than very full explanations.

If an attorney charges by the hour, using him or her as a therapist can be unnecessarily expensive. Women are better off "leaning" on family or friends, or securing a trained therapist. A women's support group can be very helpful for this purpose. Some displaced homemaker centers, YWCA's, churches, synagogues and community centers offer workshops for persons experiencing dissolution of a marriage.

A procrastinating attorney, or one who doesn't return phone calls, should be confronted in a letter. The letter should politely explain the communications problems, and if this doesn't resolve the problem, a written inquiry to the state bar association will usually bring a prompt response from the attorney.

Finally, the attorney should be willing to describe, in sufficient detail, the procedures and steps involved in the dissolution process. A patronizing attitude by the attorney ("Don't worry, I'll take care of everything") should be unacceptable. Foreknowledge is enormously helpful in dispelling unnecessary anxiety.

IV. STRATEGIES FOR CHANGE

Women's organizations can publicize the unforeseen and unfortunate consequences of marital dissolution for the midlife and older woman. Whether a traditionally-minded church women's group, or a radical feminist organization, the issue is a unifying one.

Many bar associations have a family law (or matrimonial law) section, as does the American Bar Association. These bodies concern themselves with dissolution law reform, often offering model statutes. It is important that

these policy-influencing attorneys be made aware of the crisis. When a good model bill is drafted, women's organizations should be enlisted to work for its enactment on the state level.

In addition, some state legislatures have become aware of the problem in recent years, and have established task forces or study groups to recommend legislation. The California Senate Task Force on Family Equity cited in this paper is one such example. Reform advocates can work with their legislative representatives to establish such bodies.

Creative thinking is needed on the issue of satisfactory post-marital income for the older divorced woman. The costs of the solution should be borne by society as a whole, in the manner of unemployment benefits. If women and their organizations begin a national debate on this issue, good ideas will come forth.

Organizations with large numbers of midlife and older women as members can consider setting up dissolution resolution centers that specialize in dissolutions after long marriages. An attorney referral list would be an important component of such a service.

Dissolution law is developed in the state legislatures and state appellate courts. For the former, go for amendments and model bills. In the courts, attorneys for women won't be able to appeal a ruling, and thus make progress in the law, without fair fees. Women's organizations should make themselves available as fee funders for landmark cases, or at least fund amicus briefs.

CONCLUSION

Older women are uniquely affected by divorce. Employment opportunities are very slim, even after training and education. Self-identity which has been built up over 15 to 40 years is destroyed by the dissolution. And property and retirement income planning present special problems, not always within the expertise of general law practitioners. But the identification of the problem is half the solution; the older half will come as advocates work together for reform.

NOTES

1. In re Marriage of Brantner, 67 Cal. App. 3d 416 (1977), Judge Robert Gardner of the California Court of Appeals referring to California's no-fault dissolution statute, The Family Law Act (California Civil Code sections 4000 et seq.).

2. The California Senate Task Force on Family Equity reported that "there is a direct relationship between the operation of the current legal system of divorce--more specifically, the inadequate and poorly enforced awards of child and spousal support and the unequal division of community assets--and the resulting impoverishment of women and children." Final Report (June, 1987), p. ES-2. See note 11 for information on the Task Force.

3. South Dakota.

4. "The women's movement had just begun when the so-called divorce reform law was passed. At that time, we were so concerned with the principle --that equality of right and opportunity had to mean equality of responsibility...that we did not realize the trap we were falling into." Betty Friedan, It Changed My Life (1975), p. 325.

5. Lenore J. Weitzman, The Marriage Contract: Spouses, Lovers and the Law (1981), p. 144.

6. Lenore J. Weitzman, The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America, The Free Press, New York (1985), p. 26. (See note 11).

7. Ibid. pp. 187-194.

8. Office of Technology Assessment, Congress of the United States, Technology and Structural Unemployment: Reemploying Displaced Adults (1986) p. 409. See also California State Department of Education, A Statistical Report on the Status of Displaced Homemakers in California, Sacramento (1982), p. 15.

9. Margaret Heckler, Secretary of the U.S. Department Health and Human Services, as cited in Weitzman, The Divorce Revolution, pp. 262-263.

10. Judith Wallerstein and Shauna Corbin, "Father-Child Relationships after Divorce: Child Support and Educational Opportunity," Family Quarterly, vol. 20 (Summer 1986), pp. 109-111.

11. See note 6. The Divorce Revolution won the 1986 book award given by the American Sociological Association for "Distinguished Contribution to Scholarship." In addition to this work, Weitzman has written two other books and numerous articles. She has taught at Yale University, University of California at Berkeley, and Stanford University, and is currently a professor at Harvard University.

12. In March, 1986 the California Senate established the Task Force on Family Equity. Its final report was issued in June, 1987. Task Force members included senators, judges, district attorneys, advocates for women and for men, divorce scholars and divorce practitioners. Weitzman was a member of the Task Force, as was Frances Leonard, attorney, author of this Gray Paper and OWL staff member. The final report can be ordered for $4.70 from: Joint Publications, State Capitol, Box 942849, Sacramento, CA 94249-0001.

13. "Child Support and Alimony: 1985," Census Bureau, Current Population Reports, Series P-23, No. 152 (1987), Table H. While women from long marriages are more likely to be awarded spousal support than other divorced women, the majority of these midlife and older women do not, in fact, receive any spousal support. Weitzman found that only 46% of divorcing California women married 15 years or longer were awarded spousal support in 1978; thus more than half were not awarded any support. Weitzman, Divorce Revolution, pp. 169, 187 and see generally pp. 143-214.

14. From a letter received by the Older Women's League.

15. For a complete discussion of redefining spousal support, see Weitzman, Divorce Revolution, pp. 143-214.

16. California Senate Task Force on Family Equity, Final Report pp.V 5-12.

17. The eight community property states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

18. Weitzman, Divorce Revolution, pp. 110-142.

19. Ibid., pp. 52-69.

20. In a public hearing held in Los Angeles, the California Senate Task Force heard testimony from two attorneys who reported that they had either stopped taking women clients in dissolution cases, or did so reluctantly, because women typically don't have the financial resources necessary to pay the regular legal fees. Final Report, p. V-16.

21. The task force recommended that the state bar examine the feasibility of awarding attorneys' fees at the beginning of an action/proceeding where one spouse has no or limited income due to not having been employed outside the home or where one spouse does not have equal access to the community property. Ibid.